

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

MAY 28 2019

Clerk, U S District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVEN WAYNE PHILLIPS,

Defendant.

CR 18-31-BLG-SPW

ORDER

Before the Court are United States Magistrate Judge Timothy Cavan's findings and recommendation filed April 12, 2019. (Doc. 33). Judge Cavan recommends this Court deny Defendant Steven Wayne Phillips' motion to suppress evidence seized from his vehicle.

I. Standard of review

Phillips filed timely objections to the findings and recommendation. (Doc. 34). Phillips is entitled to de novo review of those portions of Judge Cavan's findings and recommendation to which he properly objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

II. Discussion

Judge Cavan held an unmarked pill bottle containing Adderall, for which Phillips did not have a prescription, supplied Trooper Kristy Kees not only

independent reasonable suspicion to prolong the stop, but probable cause to arrest Phillips. Phillips objects to Judge Cavan's conclusion that Trooper Kees had probable cause to arrest Phillips.

The Court refrains from determining whether Trooper Kees had probable cause to arrest Phillips because, under *Rodriguez v. United States*, 135 S.Ct. 1609, 1614 (2015), Trooper Kees only needed independent reasonable suspicion to prolong the stop.

The possession of Adderall without a prescription is a felony in Montana, unless the person is exempt or did so unknowingly. Mont. Code Ann. § 45-9-102. It's undisputed Phillips was in possession of Adderall without a prescription. Whether further investigation was required before Phillips could be lawfully arrested or convicted is not important here because, at the very least, it was reasonable for Trooper Kees to suspect criminal activity was afoot and investigate further, including prolonging the stop to await a drug dog. *United States v. Evans*, 786 F.3d 779, 788 (9th Cir. 2015).

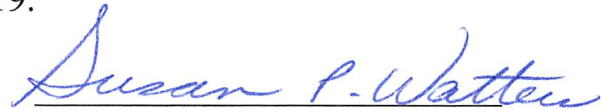
III. Conclusion and order

It is hereby ordered:

1. Judge Cavan's factual findings are adopted in full;
2. Judge Cavan's conclusion Trooper Kees had independent reasonable suspicion to prolong the stop is adopted;

3. Phillips' objection is overruled;
4. Phillips' motion to suppress (Doc. 21) is denied.

DATED this 28th day of May, 2019.



SUSAN P. WATTERS

United States District Judge